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No. 1061 4/2

Supreme Court of the United States

OCTOBER TERM, 1923. No. —.

COMPAGNIE INTERNATIONALE DE PRODUITS ALIMENTAIRES S. A., Appellant,

v.

THOMAS W. MILLER, as Alien Property Custodian of the United States of America, and FRANK WHITE, as Treasurer of the United States of America, Appellees.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

MOTION BY APPELLANT TO ADVANCE.

WADE H. ELLIS,
CHALLEN B. ELLIS,
HENRY ESCHER,
Of Counsel for Appellant.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

NOTICE.

Sirs:

PLEASE TAKE NOTICE that on Monday, June 2, 1924, on the meeting of the Supreme Court of the United States at noon, or as soon thereafter as counsel may be heard, the undersigned will present to the Court a motion to advance the above entitled case for hearing at the earliest practicable date. A copy of said motion is hereto annexed.

Washington, D. C., May 27, 1924.

Yours, etc.,

WADE H. ELLIS,
CHALLEN B. ELLIS,
HENRY ESCHER,
Of Counsel for Appellant.

To:
THE ATTORNEY GENERAL OF THE UNITED STATES and
THE DEPARTMENT OF JUSTICE,

Attorneys for Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, Appellees,
Washington, D. C.

Service of a copy of the foregoing motion and the receipt of notice of presentation thereof are hereby acknowledged this day of May, 1924.

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THOMAS W. MILLER, as Alien Property Custodian of the United States of America, and FRANK WHITE, as Treasurer of the United States of America, Appellees.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

MOTION BY APPELLANT TO ADVANCE.

COMPAGNIE INTERNATIONALE DE PRODUITS ALIMENTAIRES S. A., the appellant in the above-entitled cause, respectfully moves this Honorable Court to advance this appeal for hearing at the earliest practicable and convenient date.

The suit herein was brought by said appellant corporation to recover the proceeds of its property and for an accounting on the ground that the seizure of its property by the Alien Property Custodian in 1918 was without authority of law, because it was not an "enemy" or "ally of enemy" within the definition

contained in section 2 of the Trading with the Enemy Act, and it was not declared an "enemy" or "ally of enemy" and the property was seized as the property of certain individuals and not as the property of Appellant, as in fact it was.

The definition of "enemy" and "ally of enemy" in the Trading with the Enemy Act is as follows:

> "Sec. 2. That the word 'enemy' as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—
>
> "(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.
>
> "(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.
>
> "(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term 'enemy.'
>
> "The words 'ally of enemy,' as used herein shall be deemed to mean—
>
> "(a) Any individual, partnership, or other body of individuals, of any nationality, resident

within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory.

"(b) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official, agent, or agency thereof.

"(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation which is an ally of a nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term 'ally of enemy.' "

I.

The facts presented by the record for review are briefly as follows:

COMPAGNIE INTERNATIONALE DE PRODUITS ALIMENTAIRES S. A., is a corporation incorporated under the laws of the Confederation of Switzerland and never has done any business either in or with any enemy territory. It is a corporation of a neutral and not of an enemy country. In July, 1918, all of its property in the United States was seized as enemy-owned property and thereafter liquidated by the Alien Property Custodian.

It is contended the seizure was indisputably unlawful when made. The corporation was not an "enemy" or an "ally of enemy" within the meaning of section 2 of the Trading with the Enemy Act (40 Stat., 411, 459, 460, 1020), above quoted, and only the property of "enemy" or "ally of enemy" corporations was authorized by the statute to be seized by the Alien Property Custodian. It was, however, claimed by the Alien Property Custodian that the seizure was authorized because a majority of the corporation's stock was enemy-owned, notwithstanding the facts (1) that the statute did not define as an "enemy" a corporation a majority of whose stock was enemy-owned, (2) that the statute at most subjected to seizure, not the property of such a corporation, but only the interest of the enemy stockholders therein, which was not demanded or attempted to be seized in this case, and (3) that Congress had been urged by the Alien Property Custodian in June, 1918, to amend the Act so as to permit seizure of the property of a corporation a majority of whose stock was enemy-owned, and had declined so to do.

Therefore, as the law stood in 1918 when the seizure was made, the appellant corporation, not being an "enemy" or "ally of enemy," was entitled to sue for and recover its property under section 9 (now numbered 9-a) of the Trading with the Enemy Act; and so the matter remained during the war.

II.

After the Armistice, several amendments to the Trading with the Enemy Act were enacted by Congress (41 Stat. 977, 1147, and the Act of March 4, 1923). These amendments added to section 9, subsection b,

which consisted of a number of paragraphs expressly conferring the right to recover seized property upon various classes of individuals and corporations theretofore classified as "enemy" or "ally of enemy." The original provision as to the right of recovery by those not "enemy" or "ally of enemy" as defined in section 2 of the Act, was re-enacted in the same language and continued in section 9 as subsection a.

Among the classes thus enabled for the first time to recover by virtue of this amendment were *enemy* corporations all of whose stock, however, was non-enemy-owned (par. 6, sec. 9-b, c. 241, 41 Stat. 977, Act of June 5, 1920). Later this right was further expanded by the amendment of March 4, 1923, extending the same privilege to such *enemy* corporations if more than half of their stock was non-enemy owned (par. 11, sec. 9-b, Act of March 4, 1923).

These provisions were intended to enlarge the field of recovery, but have been construed by the courts below to restrict and defeat the right of recovery by *non-enemy* corporations and to deprive them of all right of recovery as regulated and granted from the beginning by section 9-a

III.

It is, therefore, urged that the public interests and the rights of neutral corporations, as well as the duty of the United States to the nations creating said corporations, are involved, and that the earliest practicable hearing should be had. Great prejudice will be involved to the appellant corporation if the six years of unlawful withholding of the proceeds of its property, wrongfully and unlawfully seized in 1918, be further and unnecessarily extended.

IV.

This and another similar case pending in this court present important questions of construction of the Trading with the Enemy Act which have not been settled by this court. In the case of Behn Meyer & Company, Ltd., vs. Thomas W. Miller, *et al.*, No. 921, October term, 1923, this court has granted a motion to advance and the case has been set for argument on November 10th. As that case involves practically the same questions of construction, much labor will be saved, not only to this court but to counsel for the Government and for the appellant, if the cases are argued together.

Respectfully submitted for the consideration and action of this honorable court.

WADE H. ELLIS,
CHALLEN B. ELLIS,
HENRY ESCHER,
Of Counsel for Appellant.

May 27, 1924.